

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CHRISTOPHER ALEXANDER MATHIS,

Petitioner,

v.

CIVIL ACTION NO. 3:05CV44 &
CRIMINAL ACTION NO. 3:04CR27

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, filed August 30, 2006, and the Petitioner's objections thereto filed on September 22, 2006. The Court notes that Petitioner's objections were not timely filed. However, in the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted. Petitioner's objections to the Report and Recommendation restate his underlying claims. Specifically, the Petitioner argues that the Court's consideration of relevant conduct in calculating his sentence constitutes a constitutional violation.

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As stated in the Magistrate Judge's Report and Recommendation, the Defendant was sentenced well below the statutory maximum. The Statutory maximum is based upon the drug weight charged in the indictment and admitted by the Petitioner in his guilty plea. Since the Courts consideration of relevant conduct in determining its sentence did not increase the penalty beyond the prescribed statutory maximum, consideration of such relevant conduct is permitted. See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000).

The Court, therefore, **ORDERS** that the petitioner's \$ 2255 motion (Document No. 1) be **DENIED**. Petitioner's Motion to Remand (Document No. 4) is **DENIED**. The Court further notes and affirms that Petitioner's Motion to Appoint Counsel (Document No. 3) was **DENIED** in Magistrate Seibert's Report and Recommendation. It is further **ORDERED** that this action be **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the Petitioner and all counsel of record herein.

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DATED this 19TH day of January 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE